SUPREME COURT OF THE UNITED STATES.

No. 259.

THE SCHOONER HAMPTON AND CARGO, JOSEPH B. BRINKLEY, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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a To E. C. Carrington, esq., attorney of the United States, acting on behalf of the United States in the suit in prize of the United States of America, libellants and captors in interest, against the schooner Hampton, her apparel, furniture, and cargo :

Whereas Joseph Brinkley, mortgagee of the above-named vessel, has lately appealed to the Supreme Court of the United States, at the city of Washington, from a decree rendered by the supreme court of the District of Columbia, holding a district court, in favor of you, the libellants, condemning said vessel and cargo, and a sentence dismissing the claim of said Joseph Brinkley, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Washington, in the District of Columbia, the 25th day of November, A. D. 1864, and of the independence of the United States the eighty-ninth.

ANDREW WYLIE.

1 *Libel, filed 4th February*, 1863.

UNITED STATES
vs.
SCHOONER HAMPTON AND CARGO. } Libel. In admiralty. Prize.

To the honorable the judge of the district court of the United States for the District of Columbia :

The libel of the United States government, by Edward C. Carrington, United States attorney for the District of Columbia, respectfully represents that on or about the 13th day of January, 1863, the schooner Hampton and cargo, described and enumerated in the schedule hereunto annexed, and marked A, and prayed to be read and considered as part of this libel, were seized and captured as prize by the United States steamer Currituck, of the United States Potomac flotilla, in Dividing Creek, Virginia, within the ebb and flow of tide. And libellants further represent that said schooner and cargo were at the time of said capture, and had been previous thereto, and are now, enemies' property. And libellants further that said schooner
2 was at the time of said capture, and had been previous thereto, engaged in violating the blockade established by the authority and order of the President of the United States, of which her officers and crew and owners had notice ; and further that they were at the time of said capture, and had been previous thereto, engaged in carrying articles contraband of war to certain parties in the State of Virginia, engaged in hostile rebellion against the lawful authority of the government of the United States ; and that the articles composing said cargo were at the time of said capture and are contraband of war.

And libellants further represent that said schooner and cargo were brought as prize into the port of Washington, and within the jurisdiction of your honorable court. And libellants allege that by reason of the premises said schooner and cargo have become forfeited to the United States, and ought to be condemned to their use. And libellants therefore pray your honor that admiralty process may issue against said schooner and cargo and the owners thereof, and all persons claiming an interest therein; and that the
3 marshal of the District of Columbia be required to take the same into his possession, and that process of monition and attachment may issue against said schooner and cargo, and against the owners thereof and all persons interested therein, or claiming an interest therein, warning them at

some early day, to be therein named by your honor, to appear and answer this libel; and that said schooner and cargo be delivered up to said libellants, and put into their possession.

And the owners of said schooner and cargo being absent, non-residents and unknown, libellants further pray your honor for order of publication in the usual form, and that libellants may have such other and further relief as their case may require and as may be right and proper. And they will ever pray, &c.

EDWARD C. CARRINGTON, *U. S. Att'y for D. C.*

Endorsed:

To the clerk of the district court:

Let process of monition and attachment issue as prayed.

JAS. DUNLOP, *U. S. Dist. Judge.*

February 4, 1863.

4 *Potomac flotilla.—Certificate of capture.*

Name and character of the prize: Schooner Hampton, Deal's Island.

By whom and by what vessel capture made: U. S. steamer Currituck, T. J. Linnekin, commanding.

When capture made: January 13, 1863.

Where and for what reasons: Dividing Creek, Virginia; running the blockade, with a general cargo from Baltimore.

The cargo, if any, on board: Miscellaneous freight.

What papers found: Von 1. Box, containing miscellaneous papers; 2. Book, supposed to be a tally of part of the cargo; 3. $1,650 in bonds and demand notes; 4. $604 35 in bank bills; 5. $130 in bank bills; 6. $26 25 in bank bills; 7. $25 in gold; 8. $225 in bank bills; 9. Permanent enrolment, dated at Deal's Island, 28 July, 1862; 10. Custom-house license, dated at Deal's Island, 28 July, 1862; 11. Coasting manifest, dated at Deal's Island, 30 Dec., 1862; 12. Custom-house permit, dated at Baltimore 8 Jan., 1863.

Names of prisoners: Wm. Gage, of Baltimore; R. F. Crisp, do.; Fred. Toomey, do.; Wm. Rowe, captain, Deal's Island; Alex. Webster, cabin-boy, do.; Wesley Milburn, colored, deck hand, do.; Frank Evans, do., of Baltimore; Daniel Rice, do. do.

Forwarded by Andrew A. Harwood, commodore, commanding Potomac flotilla.

13TH JANUARY, 1863.

I hereby certify that the above-mentioned schooner Hampton was captured by the undersigned, commanding the United States steamer Currituck, of the Potomac flotilla, at the time and place above designated, and that the above and annexed statement is true in every particular.

T. J. LINNEKIN.

Certificate of capture, and schedule marked A, referred to in the libel.

5 *Instructions.*

1. If the prize consists of small boats, or canoes, without any name, say "one canoe or boat," (or whatever may be the character of the prize,) "no name."

2. If the prize consists solely of goods and chattels, it should be stated under the first head above mentioned, and if the space be insufficient, a schedule of the articles captured should be annexed to the table referred to therein.

3. If the goods or prize are taken from boats or vessels destroyed, that fact should be stated under the head of "remarks," and all other matters material, and not provided for in the table.

4. On the arrival of the prize in port the officer making the capture, or if that be impossible or inexpedient, owing to the exigencies of the service, the officer having the prize in charge should promptly appear before one of the prize commissioners or the district attorney, and make the necessary affidavit, and at the same time *time* furnish him with a certified statement, as in manner above directed.

5. The papers taken from the captured vessel should be forwarded to the commissioners or district attorney. If no papers are found on board, that fact should be stated in the table.

6 *Attachment and monition*, 4 *Feb'y*, 1863.

DISTRICT OF COLUMBIA, *to wit:*

[SEAL.] The President of the United States of America to the marshal of the District of Columbia, greeting:

Whereas a libel hath been filed in the district court of the United States for the District of Columbia on the fourth day of February, in the year 1863, by the United States government against the schooner Hampton and cargo, consisting of miscellaneous freight, in a cause of capture and prize in admiralty, for reasons and causes in said libel mentioned, and praying the usual process of the said court in that behalf to be made, and that the owners of the said schooner and cargo, and all persons interested therein or claiming an interest therein, may be cited, in general and special, to answer the premises, and all proceedings being had, that the said schooner and cargo may, for the causes in said libel mentioned, be forfeited to the United States and condemned to their use:

7 You are, therefore, hereby condemned to attach the said schooner and cargo, and detain the same in your custody until the further order of the court respecting the same, and to give notice to the owners thereof, and all persons interested therein, or claiming an interest therein, or knowing or having anything to say why the same should not be forfeited to the said United States and condemned to their use, persuant to the prayer of the said libel, that they be and appear before the said court on Thursday, the 26th day of February inst, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. James Dunlop, judge of said court, the 6th day of January, 1863.

Issued the 4th day of February, 1863.

E. J. MIDDLETON, *Clk.*

CARRINGTON.

Endorsed: United States *vs* Schooner Hampton and cargo.

8 Attachment and monition returnable 26 Feb'y, 1863.

Marshal's return.

Attached the within named schooner and her cargo, and in custody this 7th day of February, 1863.

W. H. LAMON, *U. S. Marshal, D. C.*

Report of prize commissioners, filed 4 *Feb'y*, 1863.

To the hon. the judge of the district court of the United States for the District of Columbia, in admiralty:

We, the undersigned, commissioners of prize for the District of Columbia, respectfully report that on the 19th instant we were notified of the capture of the schooner Hampton and cargo, and that the said prize was at the

"Washington navy yard, D. C.;" that on the said day we took the
9 affidavit of Geo. B. Hall, acting master's mate of the U. S. steamer Carrituck, as required by law, and shortly afterwards proceeded to take the depositions of the crew and passengers of said schooner, on the standing interrogations adopted in prize causes, which are hereunto annexed and made a part and portion of this report; from all which it appears that the said schooner and cargo were captured in Dividing Creek, Va., by the said steamer Carrituck, of the Potomac flotilla, commanded by T. J. Linnekin, on the 13th January, 1863, on the charge of running the blockade; that at the time of capture eight persons were found on board, to wit, four seamen, forming the crew of said schooner, two of them white, viz: the captain and cabin-boy; and two black, viz: the deck hands; and four passengers, three of them white men and one black, their names being particularly set forth in the certificate of capture and other papers herewith exhibited; that the cargo of said vessel consists of sugars and assorted
10 dry-goods principally; that papers, to wit, ship papers, letters, books, bonds, and demand notes, bank bills, together with $25 in gold, were found on said schooner and taken from the person of said crew and passengers, (the several items being particularly designated in said certificate,) and your commissioners call particular attention to the same; that the said schooner hailed from Baltimore, having first obtained the said cargo in said city, with the intention of going to Dividing Creek, Va.; that a majority of said passengers, to wit, the three white men, were on their way to Virginia, and that the said voyage was to terminate at said Dividing Creek, as clearly appears by the deposition and affidavits taken; that the blockade was violated, as appears by the proofs taken, and that the said crew and passengers, each and all, knew of the existence of the blockade. It
11 further appears that the said schooner is owned by the captain thereof; but as respects the cargo, your commissioners have not been able to discover either the consignor or consignee; that at the time of capture no public vessels were in sight, and as soon as conveniently afterward the said prize and passengers were brought to the Washington navy yard.

Your commissioners hereby certify to the correctness of the depositions taken, to wit, the depositions of the white members of the crew, and also to the fullness of the affidavits of the black deck hands, and would add that they carefully questioned the passengers captured, with the exception of the man Wm. L. Gage, and Daniel Rice, col'd, and find their state-
12 ments to accord with the meterial facts in said depositions.

Your commissioners have made due and proper inquiries respecting the condition of the said vessel and cargo, and feel no hesitation in recommending an immediate sale, as to the interest and advantage of all concerned; the said cargo particularly must necessarily sustain damage and depreciate in value.

All of which is respectfully submitted.

January 26th, 1863.

M. ASHFORD,
A. LLOYD,
WM. R. WOODWARD,
Prize Commissioners.

Endorsed: Prize schooner Hampton and cargo. Report of commissioners. Filed 4 Feb'y, 1863.

13 *Affidavit of Francis Evans, of the crew, filed* 4 *Feb'y*, 1863.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

On this 23d day of January, A. D. 1863, before the undersigned, one of the prize commissioners, appeared Francis Evans, col'd, and a free man,

and made oath in due form of law that this affiant is one of the crew of the schooner Hampton, recently captured by the U. S. steamer Carrituck in Dividing Creek, Va.; that he was hired to go on board of said schooner at Baltimore, by Captain Wm. Rowe, on the Monday previous to the said schooner leaving Baltimore for Virginia; that the said schooner left Baltimore on Friday evening about five o'clock, (being the 9th January, 1863,) with a cargo of sugars and dry goods, and perhaps other things; and this affiant understood that the said schooner and cargo were bound to Dividing Creek, Va.; that he assisted in putting on board the sugars at Baltimore on the evening of the day the said schooner left as aforesaid; there were four pasengers on board at the time of the capture, to wit, three white men and one colored man; two of them, Mr. Crisp and Henry Rice, (the latter
14 colored,) came on board at Baltimore; the other two passengers got on board below Fort McHenry, by means of a small row-boat, that came out to the schooner while proceeding to her destination. We sailed directly to Dividing Creek, and reached there the following Monday. We were captured, as stated, that night, (early Tuesday morning;) that this affiant heard one of the said passengers (Mr. Crisp) during the trip say that he was going to Virginia. We were captured for violating the blockade, and this affiant was present when the said captain of the schooner admitted the fact. The first time this affiant saw the schooner in question was at Baltimore, on the day of the sailing of said schooner to said creek. This affiant was born and raised in Virginia, (Loudon County,) and was in Baltimore about eight months before he was hired as stated. At the time of capture he saw but one steamer, to wit, the Carratuck. This affiant has
15 no knowledge of the ship papers, or any papers, on board of said schooner. Captain Rowe is the owner of the vessel, he is informed. As respects the cargo, this affiant does not know who owned it or to whom it was consigned. The captain distinctly informed this affiant that he was going to Dividing Creek, Va., before we left Baltimore. He had heard of the blockade in question. The said schooner carried a small box of powder, caps, and shot, and two shot guns; but we made no resistance at the time of capture. After the capture we were taken to Piney Point, and a few days afterwards brought to Washington, D. C.

his
FRANCIS ✕ EVANS.
mark

Sworn before

WM. R. WOODWARD,
A. LLOYD, *Prize Com., D. C.*

16 *Deposition of And'w Webster, filed* 4 *Feb'y*, 1863.

Deposition of Alexander Webster, of the pungy Hampton, taken this 21st day of January, 1863.

I. My name is Alexander William Washington Wesley Webster; I was born on Deal's Island; I now live on Deal's Island, and have always lived there; I am in my fifteenth year; I was fourteen last Christmas. My mother is living on Deal's Island. Her name is Louisa Webster. My father has been dead two or three years. Of course I am not married.

II. I was on board of the vessel at the time of her capture. I was asleep at the time. Captain William P. Wroe, the captain of our vessel, waked me up and said we were captured. I do not know what papers, if any, the vessel had.

III. I do not know where we were taken. I had never been there before. It was in a creek. I don't know its name. It was way below Deal's Island. When I went to sleep she was sailing out in the open bay or sea. We had

passed Deal's Island betwixt an hour and an hour and a half by sun the night before. I went to sleep about half past six or seven o'clock.
17 I was waked up about two hours of daylight. I believe they called it Dividing Creek, where the vessel was taken. They said our vessel was taken because she *she* had goods. They said—I do not know—we were in Virginia. We had jack and Union flags on board, and that is all I saw on board of her. We hoisted the Union flag when we took in oysters at Deal's Island. Our vessel made no resistance as I know of. I heard no guns fired. When I waked up I saw no vessel in sight but the tug that captured us.

IIII. The captain's name was William Wroe; I think William T. Wroe. I have known him for two or three years. He owned it. He has owned it two years—one or two years. He has not owned it as long as I have known him. He got from Mr. Brinkley, who keeps groceries in Baltimore. I was not with him when he bought it or took possession of it. I only know from what I heard. I heard it from a number of persons whom I do not now recollect. I never heard it from the captain. I might have heard it
18 from him, but I don't recollect. This was the first trip I ever took in the vessel. I made a trip in this vessel before she sunk, but not since till this trip. She belonged before she sunk to the same man, Captain Wroe. Captain Wroe lives on Deal's Island; has always, as long as I have known him, lived there. He lives about two or three hundred yards from my mother's. I may have known him more than three or four years, but I think not. He is a single man. I do not know where he was born. He is a Union man; he says he is.

V. I do not know of how many tons she was. Captain says when all her ballast is out she will carry between eleven and twelve hundred bushels of oysters. When I went to Baltimore with him (I went up from Deal's Island to Baltimore in the vessel) he had two hands. He said he hired another one, named Frank, who was on board at the time of capture. I don't know whether he was hired as a hand or no. The hands on board, when I went on board at Deal's Island, were West—he is called West—I do not know his first name; he lives on Deal's Island; was born there; is not a mar-
19 ried man—and myself, besides the captain. I shipped as cook, by the month. I had been on board three weeks, I reckon, when we were captured. I do not know how long West had been on board. West is a black man. Frank came on board at Baltimore, the day I sailed on the voyage in which we were captured, and did work as a hand on board.

VI. The captain owned the vessel. I do not know who owned the cargo. I do not know that the captain owned any part of it; I don't believe he did. I was cook on board. I have known the vessel about two years. I reckon she was built in Baltimore. I first saw her at Deal's Island, about two years ago.

VII. Her name is Hampton. On her stern it is Hampton, of Deal's Island. I never heard of any other name to her. I know of no papers aboard. I saw none when she sailed from Baltimore. I do not know where she sailed for; I thought she was going to Deal's Island. She had just discharged a cargo of oysters. After leaving Baltimore she touched at Poplar Island. It was a half an hour by sun. It was blowing and we went in. Nobody
20 went ashore and no one came on board; saw nobody on shore; had no conversation with shore. She stopped at Anapolis first; went in there at dark, and staid in there till next morning. We left Anapolis when the sun was one or two hours high. We did not go ashore; anchored off the town. The captain did not go ashore. No one left the vessel to go ashore, and no one came on board. We went in there to anchor, as it was dark and snowing. I saw no one come aboard or nothing brought aboard. We did

not stop at Deal's Island; as we went down we could see it. I have no idea where the vessel was going; I saw no directions on the boxes or barrels which were aboard. The oysters were discharged at the head of the basin in Baltimore, at almost ten o'clock in the morning. We sailed from Baltimore that day. We got outside of the cutter about an hour by sun. After we discharged the oysters we took the vessel to some other wharf, and took the cargo which she had on board when she was captured. I do not know
the name of the wharves where we discharged the oysters or took on
21 board the cargo. We had nearly discharged the oysters when the captain left the vessel and went up street; I do not know where. He does not eat on vessel when she is in Baltimore; but at Charley Swyers's. I do not know where in Baltimore Swyers lives. The captain came back after we had discharged or unloaded the oysters, and moved the vessel to some other wharf, where the boxes and barrels were put on board. I did not see the goods untill they were in the hold; they were put in by some black men; West was up there helping. There might have been white men there; but if so, they were gone when I went up on deck. The first I knew was the captain told me to come up and hold turn to hoist sail. After we had discharged oysters and moved round to the other wharf the captain told me to go down in cabin and attend to my cooking. I staid there till about to sail. I saw no directions on the boxes, barrels, bales on board, and do not know what they contained. The wharf where the goods were taken aboard was a
more private place than where we unloaded the oysters. The night
22 after we staid at Poplar Island we staid at Hooper's Straits. The first night after we left Baltimore we stopped at Anapolis; the second at Poplar Island; and the third, at Hooper's Straits; and the fourth night, Monday, (last Monday night one week,) we were captured. We had no communication, as I know of, with any one at Hooper's Straits. No one went ashore and no one came aboard. No remark was made by me when we passed Deal's Island going down. I thought when we left Baltimore that we were going to Deal's Island. When we passed the cutter lying in Baltimore harbor the captain said nothing, but answered the inquiries of the cutter's officers as to his name and the name of the vessel. I never asked, even at Hooper's or Cadig Straits, which I knew was not on the way to Deal's Island, why we were not going to stop at Deal's Island.

VIII. She had a number of boxes, bales, and barrels on board, as I have stated, taken in at Baltimore. I do not know what was in them. As far
as I know no part of the cargo was taken off before the capture.

23 IX. The captain says he was the owner. I heard him tell the man that took us so.

X. I know of none.

XI. As already stated, all was put on at one time in Baltimore.

XII. I do not know anything about it.

XIII. I do not know.

XIV. I do not know.

XV. I do not know.

XVI. I do not know.

XVII. I do not know.

XVIII. I have sustained no damage, except I have not my clothes, which are on board.

XIX. I know nothing about it.

XX. I do not know.

XXI. I do not know.

XXII. It was all taken on board at one time, right from the wharf in Baltimore.

XXIII. I do not know.

XXIV. I never saw any.

XXV. Nothing was taken out, so far as I saw, from the time I left Baltimore till we were captured.

XXVI. There were five persons taken on board at Baltimore; one of them, Frank, they said, was a hand, the others were passengers. They all
24 came on board after the boxes were put on. They were all on board when we went on deck. Two of the five were black men; one of them was Frank, who said he was a hand, and the other was Daniel Rice, who helped to work the *the* vessel as much as Frank did. I had never seen any of the five who got on board before. I do not know the names of the other three men (white men) who came on board. I do not know where they lived, or where they were going, or anything about them; never heard them say. They all—white and colored—slept in the cabin. All I heard them talk about was about going down to Deal's Island gunning. I heard nothing else from them before or after we passed Deal's Island. There was at no time any one hid on the vessel. The passengers were on deck or in cabin backwards and forwards; did not hide themselves.

XXVII. I do not know.

XXVIII. I have not.

XXIX. I do not know to what place she was steering when captured. I was asleep when she was taken. When I got up on deck the men
25 taking us were on deck. When I went to sleep at night we were out in the bay sailing. I do not know what direction. I never was below Deal's Island before. When I waked up we were captured. It was bright moonlight when we were taken. When taken we were in a creek not very wide. I do not know whether our vessel attempted to get away or not.

XXX. I know nothing about it.

XXXI. We had a double-barrel gun and a single-barrel gun; one belonged to the captain and the other to one of the passengers, who also had a pistol, and said he was going down there a gunning. There were no other arms or any powder on board as I know of.

XXXII. I know nothing about it.

XXXIII. I do not know him or his name.

XXXIV. I recollect hearing of the proclamation of the blockades; I heard no conversation on board about the blockade.

XXXV. I do not know anything of the matters enquired of here.

XXXVI. I do not.

XXXVII. She never was, as far as I know, at Hampton Rhodes or Norfolk. I have stated all I know of her cargo. After we were captured
26 we were taken on board of the tug, which went sailing about after a canoe, which was caught, and then we were brought to Piney Point, and from there up here. I never saw any trunks or baggage of the passengers until after we were captured, when I saw some travelling bags, which were searched by the officers capturing us. The clothes of the passengers were in them.

ALEX. W. W. W. his ✕ mark. WEBSTER.

Sworn to and subscribed by A. W. W. W. Webster before
WM. R. WOODWARD, *Prize Comm.*

Deposition of Captain Wm. T. Wroe, filed 4 *Feb'y*, 1863.

THURSDAY, *January* 22*d*, 1863.

Captain William T. Wroe, being sworn, answers as follows:

I. My name is William T. Wroe; I was born in Charles County, Maryland;

I have lived for the last seven years in Sommerset County, Maryland; I still live there and have lived there, *and have lived there* (Deal's Island, Somerset County, Maryland) for, I think, the last fourteen years; I am a
27 subject of and owe allegiance to the United States; I am not now, and never was, married; I was thirty years old the 5th of November last.

II. I was on board at the taking of the vessel Hampton and cargo; she had nothing but my license and a permit to go home from Baltimore.

III. The vessel and cargo were captured at the mouth of Dividing Creek, between Northumberland and Lancaster Counties, Virginia. This was last Tuesday morning week (January 13th) about 2 o'clock. There was no port there and we were not anchored. I do not know what reason or pretence was given for the seizure. I have never until now been asked a question about it, although I desired to speak to the captain of the capturing vessel; I do not know the reason. The man, (Lieutenant Nelson, I think,) came up and told me to heave to, which I did. He came aboard and told me I was a prisoner; took me off in boat; I was taken on board of the steamer
28 Carrituck; we were then brought to Piney Point, and from there to this Washington City; we had the American flag on board; no others, except a little jack, four or five feet long, with Union stripes; no resistance at all was made or guns fired; we were taken by the Carrituck, a gunboat in the United States naval service; there was one vessel I saw outside after we were captured; I was asked what it was; I said it is the first I see of her; it was a schooner, a common bay craft; I do not know her name.

IV. I am the master and owner of the vessel; the first of last June twelve months I purchased her of Joseph B. Brinkley, of Baltimore, who delivered her to me at the time, and I immediately took possession of her from him in Baltimore, Maryland.

V. She turns thirty-seven tons burden; there were three besides myself in her crew, two men besides a boy; they are all of Deal's Island, except one, whom I shipped in Baltimore, where I had a hand short, having lost one the trip before; the last man shipped was Francis Evans, colored; the
29 other man was named Wesley Milburn, a black man, and the boy, Alexander Webster. I shipped or hired them all.

VI. I owned the vessel; I did not own, and had no interest whatever, except freight in the cargo; I was captain; I never knew or heard anything of her until I bought her last June a year; I first saw her in Baltimore, where I bought her; she was built in Annamessex, Sommerset County, Maryland.

VII. Her name is Hampton, and has been, I believe, ever since she was built; never heard of her having any other name; had no passport or sea chart on board; I sailed her from Deal's Island to Baltimore with a load of oysters; sold them and discharged them in Baltimore, at the head of the basin, Pratt street wharf, near Light street; took in nothing at that wharf; I finished discharging the oysters on, I think, Thursday, 8th of January, 1863; we then moved to *to* South street wharf, where we took in the cargo she had on board when she was captured; no freight was paid, but
30 was to be paid on delivery; I do not know the man that put the cargo on board; I first saw him on Thursday evening; the vessel was at the ballast wharf, foot of Hughes street, taking in ballast; when I was sent for to come up town and see the man, I had got my permit and was taking in ballast to go home, when I afterwards made this contract to take the cargo to Dividing Creek, where I went, and where I was captured; we left Baltimore on Friday evening, January 9th, somewhere about an hour by sun; that night it was snowing, and we stopped and anchored at Anapolis; left there Saturday morning about eight o'clock; it was calm, and I could not get

out before; it was moderate all day, and came on to rain, and I put back to Poplar Island, and anchored there all night; next morning, Sunday, January 10th, left there about daylight; stopped that Sunday night at Hooper's Strait; left there next morning at about eight or nine o'clock; we stopped at no other place until Monday night or Tuesday morning, when we
31 captured; we had no communication at all at either of the above-named places, viz: Anapolis, Poplar Island, or Hooper's Strait, nor with any other place from Baltimore to Dividing Creek; no one went ashore, and no one came aboard.

VIII. All that I know about it is that there were a number of boxes, dry-good boxes, candle-boxes, &c., bags of shoes, and five barrels of molasses, and four or five barrels of sugar. If there were any contraband goods I know not; I do not know what were in the boxes, but supposed they were dry-goods, candles, shoes, one box bursted, and had dry-goods, calicoes, in it. The same cargo that was taken in at Baltimore was on board when the vessel was captured; same cargo; I do not know the different species of lading and quantity of goods; no part of the cargo was unloaded; not a thing touched till we were captured.

IX. I was, and am the owner of the vessel; I have already answered.

X. Joseph Brinkley gave me the bill of sale, which is, I suppose, in the custom-house in Baltimore The names of the witnesses were, I
32 think, Eggeston and Stewart; I don't recollect first names; there was no other or any engagement; I bought, &c.

XI. The whole cargo was put on board in Baltimore at one time, viz: Friday, 9th January, 1863.

XII. I do not know the names of the laders; I was told a man wanted to see me; I went to see him; he asked me if I would take a load of goods to Dividing Creek, Virginia; I said yes; he said it would all be right, I should be paid when I got there; he was to give me five hundred dollars; he gave me no security; the goods were security; I did not know either of the men; never saw them before as I know of; I went to a tavern to meet them; I do not know to whom they were to be delivered; he told me to go to the head of Dividing Creek, and I would find a man who would receive them and pay me my freight; I supposed he had made former arrangements with some one to look out for me; some of the boxes had mere initials, as A, B, or
33 C on them; no names or directions; I have no idea who owned them, who delivered them to the vessel, or who was to receive them; the goods were all brought down to the wharf on drays; the man I contracted with did not come down; I have never seen him since; I judge he started on; he talked something of going down; there were four or five present; one, an elderly man, did the talking; I judged they were from New York.

XIII. No bills of lading were given.

XIV. There none as I know of.

XV. None.

XVI. None at all as I know of, except my own little private papers, license, permit, &c. No letter, paper, or anything else was torn, burnt, thrown overboard, destroyed, or cancelled, or attempted to be cancelled.

XVII. Never.

XVIII. None except the loss of freight, my clothes, the money I had on board, ($130 in my pocket-book,) and some small change in my purse. The freight was $500; I have no security for them except as above.

XIX. None.

XX. I know nothing about the ownership of the cargo; I was to
34 put the goods right on shore and receive my freight from a man who would be there, and go about my business.

XXI. I do not know, except as I have stated.

XXII. All was taken right from the wharf in Baltimore, Bowley's wharf, I think; from there to the head of South street.

XXIII. I know of nothing of the kind.

XXIV. No paper was taken from the vessel but those delivered to and carried away by our captors.

XXV. Nothing at all was touched.

XXVI. There were four passengers on board; they were at no time secreted; were (all hands) on deck at the time of the capture. The passenhe is a clerk in a store, or has been a clerk with Samuel G. Miles; is a margers' names were William L. Gage; belongs, I reckon, in Baltimore; I think ried man; his family lives in Baltimore; I reckon he was born North, in Maine perhaps. Another is Toomey; don't know his first name; did not know his name until he gave it to the captors; I do not know where he lives—travelling about—has attended to selling or settling pumps;
35 am not certain; I heard him say the reason he was going down was he had some money to collect for settling pumps; I do not think he is a married man; I do not know where he was born. Another name is Crisp, don't know his other name; did not know his name until he gave it in to captors; I think he is unmarried man; I do not know his business; kind of sportsman like—farmer. The other was a black fellow; I think he gave his name in as Daniel Rice; he has been a waterman; he did live in Virginia, but he has been in Baltimore for some time. They were all strangers to me but Gage; I had seen him before; they all took passage for Dividing Creek, Virginia. The black fellow, Daniel Rice, and Crisp got on in Baltimore. The other two met me down the river, about half way down the river, and got on board; they had bargained with me before I left Baltimore to get on board down the river; said they had business down the river, and they were afraid to go out by the cutter, lest they should be stopped; I do not think they had any interest in the cargo, none of the passengers had; they did
36 not seem to know anything about it; they were informed by me that I was going down; Gage had told me that he had business down there, and would like to go down. After I had contracted to take the goods, &c., I told him that he could go; he told the other two; I knew nothing about them till they came on board; I saw Gage most every trip to Baltimore; I met him on street; I do not know that Gage had any letters at all on his person, and do not believe he or Mr. Sam'l G. Miles had any interest in or charge over the goods.

XXVII. There were none.

XXVIII. I have not.

XXIX. I was steering right into the creek, and right to the cutter when taken. The cutter Currituck was lying inside the creek, and if she had not hailed me as soon as she did we should have run right into her. It was a moonlight morning. I saw the cutter. I did not know what she was, or that she was so near until she hailed; she was painted white, and I thought she was a house; our course was not at all altered.

37 XXX. Mr. Brinkley had her built in the first instance, seven years ago last fall; he sold the half of her to Captain Curtis, afterwards Captain Curtis bought the whole of her, and got behindhand some way, and Mr. Brinkley had to replevy and take her again. I learned this from Mr. Brinkley and others besides. She now belongs to me and no one else, and she is all I had in this world.

XXXI. There were no guns or arms on board except that Mr. Toomey, the passenger, had a double-barrel gun and little pistol, and my cabin-boy had a single-barrel gun, which I bought for him.

XXXII. The vessel belongs to me; I was employed to take the cargo (by whom or for whom I know not, and to whom I know not,) to Dividing Creek,

Virginia, when I was captured. I did not and do not now know the name of the persons contracting with me.

XXXIII. His name is Linnekin, or something like it; I do not know his first name; he commands the steam-tug or gunboat Carrituck.

XXXIV. I did hear something of the proclamations about the time they were issued; heard something concerning them about the time they were made; there was no conversation or talk about it on the vessel. The reason given by Gage why he did not wish to pass the cutter was that the cutter did not let too many passengers pass on a vessel; some were running away to escape the draft. Hands hired to go to Deal's Island to work had been stopped. I have heard Gage say since he has been arrested that he was down in Virginia collecting at the time of the blockade, and was caught there on his passage here.

XXXV. I would not have taken less than a thousand dollars for the vessel; she may have been worth more to me than any one else; I know nothing of the value of the cargo; I do not know anything as to the rest of the interrogation.

XXXVI. No.

XXXVII. When Curtis owned her, some four or five years ago, the vessel belonged to and hailed from Hampton. I was down there last fall with a cargo of ice for military purposes; she has not been there since; I have already fully answered the rest of the interrogation; I have nothing to do with Norfolk, but was to go to Dividing Creek, and nowhere else. I have heard of a man named Taylor, who lives at Lanpford, who use to be with Miles as Lanpford & Miles, now Lanpford & Hopkins.

WM. T. ROWE.

Sworn to and subscribed by said W. T. Wroe this 22d January, 1863, before—

WM. R. WOODWARD, *Prize Com'r.*

Deposition of Wesley Evans, or John W. Milburn, filed 4 Feb'y, 1863.

TUESDAY, *January 22d*, 1863.

Deposition of Wesley Evans, free colored.

I was one of the crew of the schooner Hampton; I was hired on her by Captain Wroe at Deal's Island to run oysters from Deal's Island; there no other of the crew but little Aleck, the cabin-boy; there was one passenger from Deal's Island to Baltimore, Mr. Owen, a painter; I do not recollect the day we left Deal's Island; it was on a Tuesday; we were calm and did not get to Baltimore for some days; I do not know what day we got to Baltimore; we laid there one whole day before we unloaded a single oyster, there being so many oysters ahead of us; we unloaded at Bowley's wharf, at the head of the basin; captain was not present all the time; we finished unloading about ten o'clock the morning after we commenced; we did not unload all in one day; I think the captain was at the vessel when we finished unloading; the vessel then dropped down to the ballast wharf to take in ballast; I do not remember going to any other wharf; all the goods which I helped to take in were taken in at the ballast wharf; I helped to take in some boxes, like dry-good boxes, some small boxes, some barrels, and some bags; I do not know how many; I was up town part of the time; the captain and one old colored man Daniel, who afterwards went in the vessel, and Frank, helped me to put boxes in; I did not see the boxes, &c., when they came down; I was not there then; I do not know what was in the boxes or barrels; I saw no white man about the vessel before we took the goods in. I saw a young white man, named Crisp, who went down as passenger;

he did not seem to have anything to do with the cargo. I do not remember of but two passengers we took in at Baltimore—Mr. Crisp and old colored gentleman, named Daniel. I did not hear either of them or the captain say where they were going; I was not at the vessel when they came aboard. When I got down to the vessel Mr. Crisp was laying down in the cabin; I heard the old man (colored) say he was going down with us to the Eastern Shore. I never saw Mr. Gage about the vessel until he came aboard after we left Baltimore. I had seen Mr. Gage before in Baltimore, but not at this trip, till he came aboard. We left, I think, Baltimore the day after we unloaded the oysters; I think about one or two o'clock. Mr. Gage got on the vessel outside of the cutter, and she lay out below the fort; came out to us
42 in a row-boat; when he came aboard I was down in the cabin, and when I came up he was there, and the row-boat was there; I do not know whose the row-boat was; I do not know that he was expected. That night we stopped at, I think it was called, Anapolis. I had been in that harbor before, but not with captain, nor up so far, and it was night this time. The next night I think we stopped at Poplar Island. The next night, if I mistake not, somewhere about Hooper's Strait; and I believe it was the next night after we were captured. I never heard any one on board say where we were going; I did not ask; I thought it was strange the captain was going that way, but I did not ask him. I knew we were passing Deal's Island; I knew there were two straits, and sometimes they pass the one, if the wind is so, and go through the other; and when we got to the strait furthest down it was dark; I only knew the last strait by the light-house. I heard the captain say when he had got by the last strait, below it,
43 that he was ordered or chartered, I don't know which, to go to Dividing Creek, and I was uneasy, very; from the time I heard him say this to the time we got to Dividing Creek was short, so we were mighty nigh there. None seemed to keep themselves concealed that I saw; I did not hear the passengers talk about where they were going. When I heard that they were going to Dividing Creek I felt satisfied that they had some evil design, and would get me into trouble, after having persuaded me to follow the water; I have heard them say Dividing Creek was in Virginia. I have heard talk of the blockade; I heard say it was wrong to go into Virginia with vessels; and I, when I heard they were going into Dividing Creek, knew it was wrong, but I could not help myself. I did not see the captain with Mr. Miles, Taylor, or Gage, while we were in Baltimore. I suppose it was about ten or eleven o'clock, might have been later, of Mon-
day or Tuesday night when we were captured. When we were cap-
44 tured every one on board was on deck except the little boy Aleck. I don't think any attempt was made to escape or resist. When we first saw the steamer Carrituck, I heard that was her name, we were about five hundred yards; I did not see her until some one spoke; I did not know what it was; I was very badly frightened; I saw no arms aboard except a double-barrel and a single-barrel ; I saw no pistol; the double-barrel gun belonged to one of the passengers, Mr. Toomy. I do not know whether the single-barrel gun belonged to the captain or the little cook Alex. We had as passengers Mr. Gage, the old colored man Daniel, Mr. Toomy, and Mr. Crisp. I do not know what they were to pay for passage. We got to Baltimore, I now recollect, from Deal's Island, on Sunday about midday; we commenced unloading on Tuesday, finished, as nigh as I can come at it, on Wednesday; dropped down to the ballast or South street wharf on Thurs-
day, and sailed on Friday. One of the captain's hands got drowned
45 the trip before, and was wanted, and Frank was hired. The first I ever saw of him was when he came to the vessel on Friday. After we were captured a canoe was captured. We were brought to Piney Point

on Thursday, and staid there until Sunday afternoon, when we were brought to Washington City. I was born free, in Sommerset County, at Annamessex. I have been living at Deal's Island eight years; I am about twenty years old. The pungy I heard the captain, Wroe, say belonged to him. I never heard any one say to whom the cargo belonged.

JOHN W. MILBURN.

Subscribed and sworn to by said John W. Milburn, this 23d January, 1863, before

WM. R. WOODWARD, *Prize Com.*

Statement of Frederick Toomy, filed 4 *Feb'y*, 1863.

I had between $500 and $600, and some sealed notes or bonds; my money was three one-hundred dollar notes, Baltimore money; one five-dollar note, I think in Confederate money. I shall lose those bonds if I do not get
46 down; I had no interest in cargo; started for my place in Baltimore; made no bargain as to charge for passage; did not want to go to Norfolk; never heard it spoken of.

Statement of Robert Crisp, filed 4 *Feb'y*, 1863.

I had no money but twenty-one dollars, which I was allowed to retain. I started for Virginia; born in Maryland; I was in Virginia before war; got permission in May—last May a year—to carry two slaves to Richmond; took them to Richmond, then to North Carolina; did not sell them, and brought them back to Richmond; came right home; had given bond in Baltimore; am not bound to say whether I have frequently since; I have been there since; I did not know Captain Wroe; I knew none but Mr. Gage; Mr. Gage informed me that a vessel by that name was going to Virginia; Mr. Gage got on board below Baltimore; I did not know who had the cargo; never heard Mr. Gage say anything about the cargo, nor about Mr. Taylor, or Miles; never saw the letters shown me; captain charged me $20; I
47 knew there was a blockade, and that we could not get there without running the blockade; we could not get permission.

Frederick Toomy and Robert Crisp, being sworn by the undersigned, made the above statements in reply to questions propounded by us. Mr. Toomy further admitting other statements made by Mr. Crisp.

WM. R. WOODWARD, *Prize Comm'r.*

January 23d, 1863.

Claim and answer of J. B. Brinkley, filed 11 *June*, 1863.

48 U. S. district court.

DISTRICT OF COLUMBIA, *County of Washington, sct:*

UNITED STATES
vs.
THE SCHOONER HAMPTON, OF DEAL'S ISLAND.

And Joseph B. Brinkley, of Baltimore, in the State of Maryland, comes and claims as his property, as mortagee, the said schooner Hampton, of Deal's Island, seized by said the U. S. steamer Currituck, and libelled and propounded against as forfeited, in and by the libel of information aforesaid, and the said Brinkley alleges that at the time of the seizure aforesaid he was and yet is the true and lawful owner and proprietor bona fide of the said vessel, as mortgagee, and to the extent of his mortgage on the same,

being a mortgage executed on said vessel by William T. Rowe, to secure his note to said Brinkley for $823, dated Dec. 13, 1862, under seal, and payable on demand, with interest, being for a balance of purchase-money and money loaned for repairs, and of this he is ready to make due proof, by his own oath or otherwise, as the court may direct.

J. B. BRINKLEY.

WALTER S. COX, *Proctor.*

Sworn and subscribed by Jos. B. Brinkley, this 11th day of June, A. D. 1863.

R. J. MEIGS, *Clk.*

49 *Order of reference to commissioner, filed 9 Sept., 1863.*

Supreme court of the District of Columbia, sitting as a district court.

U. STATES
vs.
SCHOONER HAMPTON AND CARGO. } No. 67.

On motion of the proctor for Jos. B. Brinkley, interposing as mortgagee, it is this 9th day of September, A. D. 1863, ordered that this cause be referred to A. Lloyd, esq., commissioner, to report upon the mortgage on said schooner, claimed by said Brinkley, and set forth in his claim filed in this cause.

ANDREW WYLIE.

50 *Report of A. Lloyd, com'r, on the claim of J. B. Brinkley, Sept. 17, 1863.*

To the hon. the judge of the district court of the United States for the District of Columbia, in admiralty sitting:

The report of A. Lloyd, one of the prize commissioners for the District of Columbia, respectfully shows that on the 17th day of September, A. D. 1863, John J. Stewart, a witness for J. B. Brinkley, appeared before him, and after being duly sworn was examined respecting the claim of the said Brinkley on the schooner Hampton, captured as prize to the United , in pursuance of the order of this court, and he files herewith the deposition of said Stewart; also what purports to be the note and mortgage deed referred to in said proceedings.

He further reports that the said Brinkley closed his case on the testimony referred to.

All of which is respectfully submitted.

ASBURY LLOYD, *Commissioner.*

51 *Deposition of Jno. J. Stuart, accompanying the report of Com'r Lloyd.*

UNITED STATES
vs.
SCH. HAMPTON AND CARGO. } In admiralty.

Deposition of John J. Stewart, taken this 17th day of September, A. D. 1863, at the office of the prize commissioners for the District of Columbia.

My name is John J. Stewart; my present place of residence is at Baltimore, in the State of Maryland, and such place is my native city. Am clerk of J. B. Brinkley, grocer and commission merchant, in said city. Was present at the execution of a certain note bearing date on the 13th day of December, A. D. 1862, made by one Wm. T. Rowe for the sum of eight hundred and twenty-three dollars, ($823,) with interest from date, and payable to the said J. B. Brinkley; that the said William T. Rowe is personally well known to me, having known him for the period of five years and upwards;

that the signature attached to said note is genuine, as I saw him sign it on the date as appears in said note; that I have no interest whatever in such note, or in any claim the said Brinkley may have against the said
52 Rowe; that the said note was at the date thereof delivered to the said J. B. Brinkley in my presence; that I am not aware of the present whereabouts of the said Rowe. The said note was given for the balance of purchase-money of the schooner Hampton, and also for cash advanced for repairs and for merchandise sold to the said Rowe; that the said J. B. Brinkley is a loyal citizen of the United States to the best of my knowledge and belief; that I know nothing respecting any mortgage deed given by the said Rowe to the said Brinkley.

JNO. J. STEWART.

Sworn to before me this 17th day of September, A. D. 1863.

A. LLOYD, *Prize Com.*

53 *Mortgage from W. T. Rowe to J. B. Brinkley referred to in the report of A. Lloyd, com'r.*

UNITED STATES OF AMERICA, *State of Maryland, to wit:*

Whereas Wm. T. Rowe, of Somerset County, Maryland, is indebted to Joseph B. Brinkley, of Baltimore City, Maryland, in the sum of ($823 00,) eight hundred and twenty-three dollars, on his bill obligatory, bearing date the same as these presents, and payable on demand; and whereas the said William T. Rowe is desirous of securing the payment of the said money so due:

Know all men by these presents that I, William T. Rowe, for and in consideration of the premises, and in consideration of the sum of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said Joseph B Brinkley the schooner Hampton, of Deal's Island, together with her
54 masts, yards, sails, rigging, anchors, cables, boats, tackle, apparel, and appurtenances, as she was and is more particularly described in a certificate of enrolment granted her at the port of Deal's Island, in Maryland, in the following words:

"No. 54, (fifty-four.) Enrolment in conformity to an act of the Congress of the United States of America, entitled 'An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same.' William T. Rowe, of Somerset County, State of Maryland, having taken or subscribed the oath required by the said act, and having sworn that he is a sole owner of the ship or vessel called the Hampton, of Vienna, whereof William T. Rowe is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built in the county and State aforesaid during the year
55 eighteen hundred and fifty-five, (1855,) now remeasured at this port, July 28th, 1862, papers being lost, and said certificate having certified that the said ship or vessel has one deck and two masts, and that her length is forty-eight feet, (48 f't,) her breadth seventeen feet, (17 f't,) her depth five feet six inches, (5 f't, 6 inches,) and that she measures thirty-seven tons and 83-95 p't of a ton; that she is a schooner, has a square stern, no galleas, and a billet head. And the said owner having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said schooner has been duly enrolled at the port of Deal's Island.

Seal of the treasury of the United States.

Seal of the collector of the port of

Seal of the naval officer of the port of

"Given under my hand and seal, at the port of Deal's Island, district of Vienna, this 28th day of July, in the year one thousand eight hundred
56 and sixty-two, (1862.")

To have and to hold the said vessel, and appurtenances thereunto belonging, unto the said Joseph B. Brinkley, his executors, administrators, and assigns, to the only proper use and behoof, and as the proper goods and chattels of the said Joseph B. Brinkley, his executors, administrators, and assigns, from henceforth forever; and I, the said William T. Rowe, for myself, my executors, and administrators, do hereby covenant and agree to and with the said Joseph B. Brinkley, his executors, administrators, and assigns, that at the execution of these presents I am the true and lawful owner of the said vessel called the Hampton, of Deal's Island, and appurtenances, and have full right and authority to sell and dispose of the same, freed from and cleared of all claims, incumbrances, or demands whatsoever. Provided
57 always, and these presents are upon this condition, nevertheless, that if the said William T. Rowe, his executors or administrators, shall well and truly pay or cause to be paid unto the said Joseph B. Brinkley, his executors, administrators, or assigns, the sum of eight hundred and twenty-three dollars, ($823 00,) in sixty days from the date of these presents, with interest from date, that then and from thenceforth, these presents, and everything herein contained shall cease and determine and be absolutely void; otherwise, to be and remain in full force and virtue. And it is hereby covenanted and agreed by and between the parties to these presents that if default shall be made in the payment of the said sum of money, that then and from thenceforth it shall be lawful for the said Joseph B. Brinkley, his executors, administrators, or assigns, to enter upon and take possession of the said schooner, or vessel, her masts, yards, sails, rigging, anchors, cables,
58 boats, tackle, apparel, and appurtenances aforesaid, and to grant, bargain, sell, and dispose of the same, and all other the premises aforesaid, at public auction or vendue, in the city of Baltimore, or elsewhere, first giving five days' notice of the time and place of such sail, and as the attorney of the said Wm. T. Rowe, or otherwise to make, sign, seal, execute, and deliver to the purchaser or purchasers thereof a good and sufficient bill of sale or other conveyance therefor, and out of the moneys arrising from such sale to retain all such sum or sums of money which shall then be due Joseph B. Brinkley, his assigns, according to the true intent and meaning thereof, together with all costs and expences attending such sale, rendering the overplus money, if any, to the said Wm. T. Rowe, his executors, administrators, or assigns.

In witness whereof, I, William T. Rowe, hereunto set my hand and seal, this 13th day of December, in the year of our Lord one thousand eight
59 hundred and sixty-two.

WM. T. ROWE. [SEAL.]

Signed, sealed, and delivered in the presence of—
ALLEN E. FORRESTER.

STATE OF MARYLAND, *Baltimore City, to wit:*

Be it remembered, that on the 13th day of December, in the year of our Lord eighteen hundred and sixty-two, before me, the subscriber, a justice of the peace of the State of Maryland, in and for said city, personally appeared Wm. T. Rowe, and acknowledged the above mortgage to be his act and deed, and at the same time and place, also, personally appeared before me, Joseph B. Brinkley, mortgagee above named, and made oath that the con.

sideration set forth in the foregoing mortgage is true and bona fide, as therein set forth.

ALLEN E. FORRESTER.

Endorsed: Recorded at the custom-house, at Deal's Island, Dec. 22d, 1862, page 155, 156, 157.

60 *Mortgage bill of sale, Joseph B. Brinkley from William T. Rowe.*

DECEMBER THE 24TH DAY, ANNO DOMINI 1862.

Then was delivered unto me, the subscriber, the within mortgage bill of sale, in order to be enrolled among the records of Somerset County, which said mortgage bill of sale, together with the acknowledgment thereof thereon endorsed, is accordingly enrolled among the same records in Liber L. W. No. 7, folios 514 and 515, on the day and year aforesaid.

Per LEVIN WOOLFORD, *Cl'k.*

Admitted as though duly proved.

NATH'L WILSON, *Ass't U. S. Att'y, D. C.*

Note of W. T. Rowe referred to in the report of A. Lloyd, com'r, and the deposition of J. J. Stuart.

$823 00. BALTIMORE, *Dec. 13th*, 1862.

On demand I, the subscriber, of Deal's Island, in the County of Somerset, State of Maryland, promise to pay J. B. Brinkley, or order, eight hundred and twenty-three dollars and no cents, for value received, with interest from date; to which payment I bind myself, my heirs, executors, administrators, and assigns, as witness my hand and seal.

WM. T. ROWE. [SEAL.]

Test: JNO. J. STUART.

61 *Sentence dismissing the claim of J. B. Brinkley, Sept.* 17, 1863.

Supreme court of the Dist. of Col'a, in admiralty.

UNITED STATES
vs.
SCHOONER HAMPTON, OF DEAL'S ISLAND. } No. 67.

This cause being submitted upon the claim of Joseph Brinkley, and having been argued and submitted, it is by the court, this seventeenth day of September, A. D. 1863, sentenced, ordered, and adjudged that said claim be, and it is hereby, dismissed.

ANDREW WYLIE.

63 *Final decree of condemnation of vessel and cargo, filed* 17 *Sept.*, 1863.

At a stated term of the district court of the United States of America for the District of Columbia, held at the United States court-rooms in the city of Washington, on Tuesday, the seventeenth day of September, in the year of our Lord one thousand eight hundred and sixty-three.

Present: Andrew Wylie, justice.

THE UNITED STATES
vs.
THE SCHOONER HAMPTON, HER TACKLE, &C., AND CARGO. } In prize.

This cause having been heard on the libel and proofs and testimony taken in preparatorio, the answer of the claimants and the argument of counsel, and due deliberation being had in the premises, now, on motion of E. C. Carrington, attorney of the United States, it is ordered, adjudged, and decreed

by the court that the schooner Hampton, her tackle, &c., and cargo, be condemned and forfeited to the United States, on the ground that the said captured property is lawful prize of war. And the said schooner having been sold by virtue of an interlocutory order of this court, it is further ordered
64 that the marshal make a full return of said sale, and of the deposit of the proceeds thereof, as required by law, and that $1,650 in bonds and demand notes, taken from the person of Frederick Toomey, be restored to the said Toomey or to his proctor, and that $7,6275 in southern bank notes, be paid into and retained in the registry of this court until further orders be given, and that the sum of $25 in gold be paid into the treasury of the U. S. as though the same were a part of the proceeds of said sale. And it is further ordered, adjudged, and decreed that the costs and disbursements herein be adjusted and paid according to law; that the prize commissioners shall proceed under the direction of the court, as soon as possible after the entry of this decree, to take the requisite evidence, and report the same to the court, to the end that a final decree may be made herein, determining what public ships of the United States are entitled to share in the prize, and wether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture.

By order of the court.

R. J. MEIGS, *Clk.*

65 *Certificate of proper case of appeal.*

Supreme court of the District of Columbia, sitting as a district court.

THE SCHOONER HAMPTON, OF DEAL'S ISLAND, vs. CLAIM OF JOSEPH BRINKLEY. } No. 67.

And now I, Andrew Wylie, holding the district court aforesaid, having duly considered the claim of Joseph Brinkley, a mortgagee of said vessel, filed in the above case, do hereby certify that in my judgment the questions involved in said claim are of difficulty and general importance, and that an appeal ought to be allowed from the judgment of the court on said claim, notwithstanding that the amount in controversy is less than one thousand dollars.

In witness whereof, I have hereunto affixed my official signature on the day and year above written.

ANDREW WYLIE.

67 *Appeal prayed and allowed.*

Supreme court of the District of Columbia, sitting as a district court, in admiralty.

UNITED STATES vs. SCHOONER HAMPTON. } No. 67.

And now, this 17th of September, A. D. 1863, in open court, Joseph Brinkley, the claimant of said vessel as mortgagee, by his proctor and advocate, Walter S. Cox, prays on appeal, according to law, from the sentence of the court dismissing the claim of said Brinkley, and the same is allowed.

ANDREW WYLIE.

69 *Appeal bond of J. B. Brinkley, March* 9, 1864.

Know all men by these presents that we, Joseph Brinkley, W. P. Whiting, and John J. Stewart, are held and firmly bound unto the United States in the sum of one thousand dollars, current money, to be paid to the said

United States, their certain attorney or assigns, to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these present. Sealed with our seals, and dated this ninth day of March, A. D. 1864.

Whereas the above-bounden Joseph Brinkley is about to prosecute an appeal to the Supreme Court of the United States to reverse the judgment rendered by the district court of the District of Columbia, in the case of the schooner Hampton, of Deal's Island, upon the claim of said Joseph Brinkley, a mortgagee of the said vessel:

Now, the condition of the above obligation is such that if the said
70 Joseph Brinkley shall prosecute his said appeal with effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; it shall otherwise remain in full force and virtue at law.

J. B. BRINKLEY. [SEAL.]
W. P. WHITING. [SEAL.]
JNO. J. STUART. [SEAL.]

Witness: SAM'L E. EGERTON.

I have enquired of those in whom I have confidence, in regard to the responsibility of the surities to the within bond, and am of opinion that they are amply able to pay the penalty thereof; the principal himself, as I learn upon enquiry, is amply sufficient for the penalty.

WM. PRICE, *Dist. Att'y U. States for the Md. Dist.*

Baltimore, March 8, 1864.

Bond approved.

ANDREW WYLIE.

71 UNITED STATES OF AMERICA, *District of Columbia, to wit:*

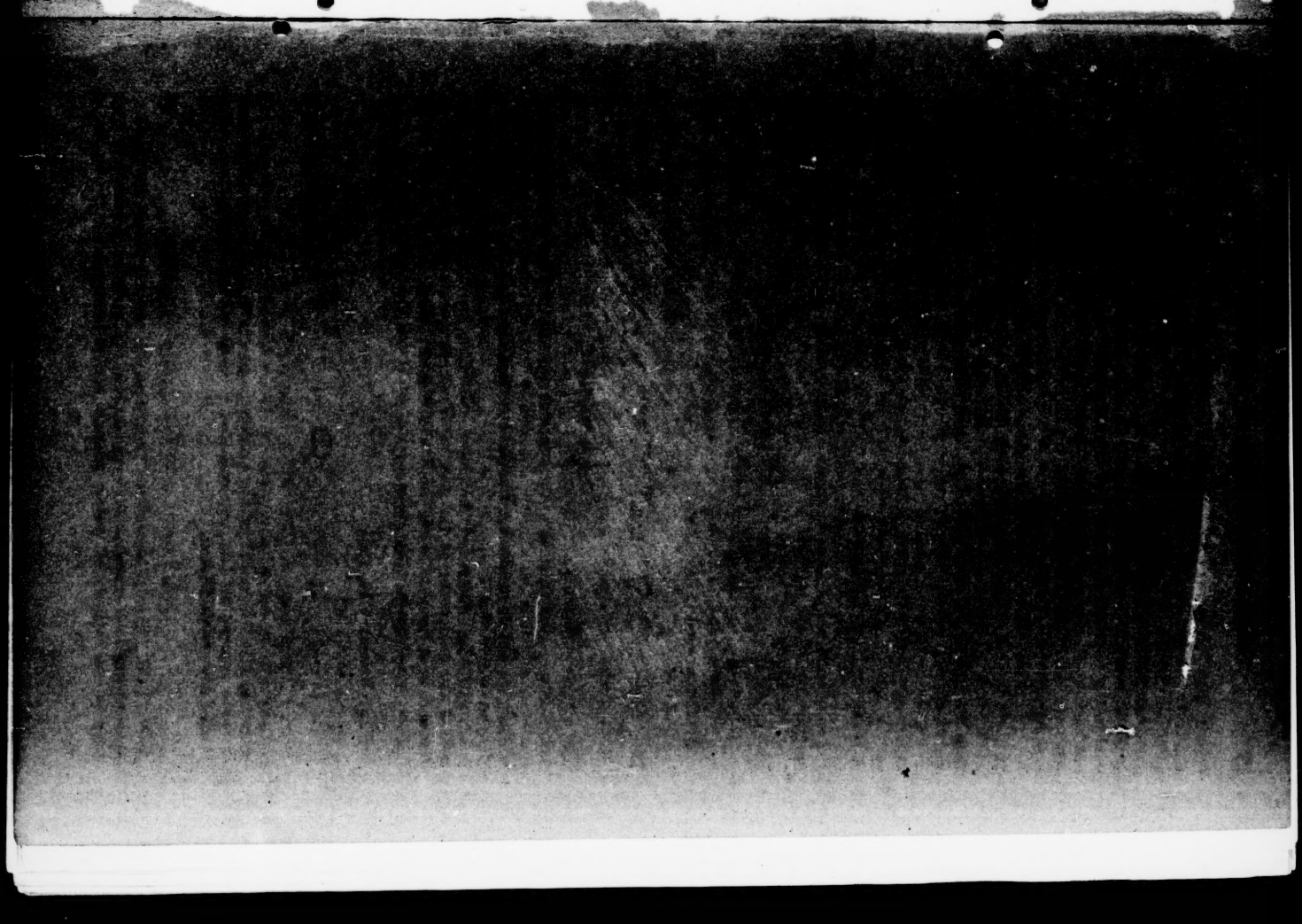
UNITED STATES
v.
THE SCHOONER HAMPTON AND CARGO. } In admiralty. Prize. No. 67.

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office in the case above stated.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said court, at the city of Washington, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

R. J. MEIGS, *Clerk.*

Filed February 14, 1865.



IN THE

Supreme Court of the United States,

Appeal from the Supreme Court of the Distict of Columbia.

THE SCHOONER HAMPTON AND CARGO, JOSEPH B. BRINKLEY, CLAIMANT,

vs.

THE UNITED STATES.

Appellant's Statement and Points.

A libel was filed in this case on the 4th of February, 1863, by the United States against the Schooner Hampton.

The libel states:

1st.—That about the 13th of January, 1863, the Schooner and Cargo were seized and captured, as prize, by the United States Steamer Currituck, in Dividing Creek, Virginia.

2d.—That the said Schooner and Cargo before, and at the time of said seizure, and up to the filing of the libel, was enemies property.

3d.—That at the time of the seizure, and previous thereto, the said Schooner had been engaged in violating the blockade.

4th.—That at the time of such capture and previous thereto, the said Schooner had been engaged in carrying articles, contraband of war, to certain parties in the State of Virginia engaged in hostile rebellion against the lawful authority of the United States. (See Record, page 1.)

The evidence shows the truth to be, That the Schooner was taken in Dividing Creek, Virginia, having on board a cargo of sugar and assorted dry goods; that she hailed from Baltimore, was owned in Maryland by the captain on board, obtained her cargo in Baltimore with the intention of going to Dividing Creek; that the passengers on board were bound to Virginia; that her voyage was to terminate at Dividing Creek. (Record, page 4.)

No claim was made for the vessel by the owner, but a claim was made by Joseph B. Brinkley, of Baltimore, Maryland, and an answer filed by him, as mortgagee. (Record, page 14.) The mortgage is set out in the Record, page 16. It is dated December 13th, 1862, and it was given for the purpose of securing the payment of a note of the same date as the mortgage, for the sum of $823.00. The note was for the balance of purchase money, and money loaned for repairs.

The mortgage is recorded in the Custom House, and in the Record Office of Somerset County, Maryland, the residence of the owner, all in accordance with the Acts of Congress, and with the laws of Maryland. The Claimant is proved to be a loyal citizen of the United States. (Record, page 15.)

The Court below decreed the forfeiture of the Schooner and Cargo to the United States, as lawful prize of war, and dismissed the claim of Brinkley. (Record, page 18.)

The Court below certified, that the questions involved in this claim were of difficulty, and general importance, and that an appeal ought to be allowed. (Record, page 19.)

An appeal was taken to this Court.

The question in this case, is upon the effect of the mortgage as a claim. Does it prevail against the forfeiture?

Ought it to have been allowed out of the proceeds of the sale of the Schooner, brought into Court?

The Appellant submits the following propositions in support of his claim.

1st.—The mortgage is a *jus in re*, and not a mere lien.
Conrad *vs.* Atlantic Ins. Co., 1 Pet. 441–447.
Thelusun *vs.* Smith, 2 Wh. 396.

2d —If this case was unaffected by the Act of Congress of March 3d, 1863, (12th Stat. at Large, 762,) this claim would prevail. Any claim upon property captured in war is valid by the law of nations, if the claim amounts to a *jus in re*,
This claim is not a secret one.
The Tobego, 5 C. Rob. 194.
The Marianna, 6 C. Rob. 24.
The Sally McGee, 3d Wall. 451.

3d.—The forfeiture in this case however was for breach of municipal law. The Act of July 13th, 1861, was in force, and applicable to the facts of this case and controlled it. The general law of nations as applicable to the question, was repealed to the extent of the provisions of this Statute.

Aug. 6. 61 12 Stat. at L. 319

4th.—All municipal forfeitures are subject to such claims as this, accruing before the act which causes the forfeiture.

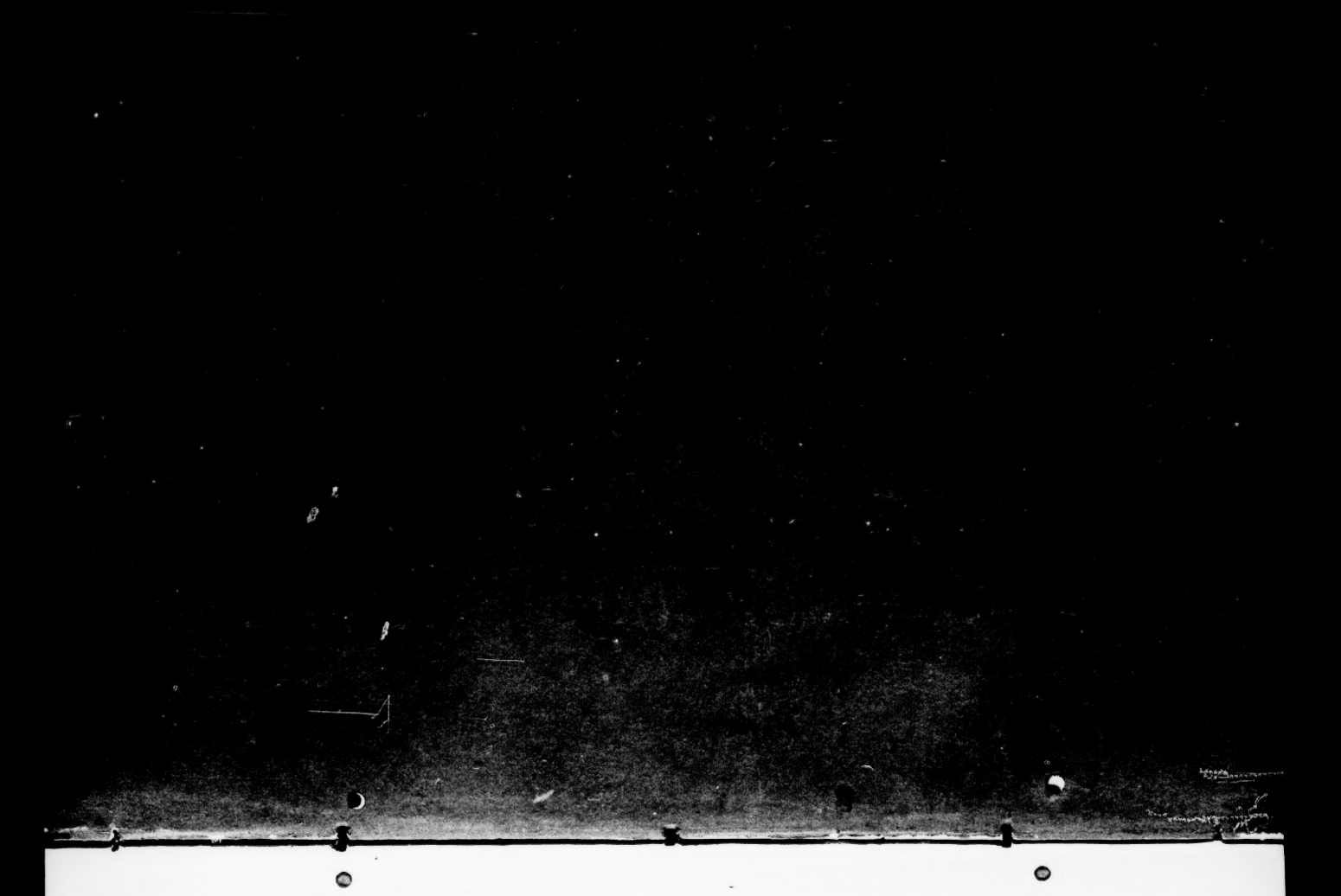
Savings clause

5th.—The Act of 1863, March 3, (12 Statutes at Large, 762,) is applicable, whatever ground of forfeiture may be assumed in this case. The vessel was undoubtedly condemned by virtue of laws, applicable to the rebellion, and the Act provides, that out of the proceeds of property so condemned, the claim of any *bona fide* loyal citizen of the United States shall be paid.

The Sally Magee, 3d Wallace, 451.

Act of 63 Applies to act of 13th of Aug. 61

WM. S. WATERS,
Proctor for the Appellant.



In the Supreme Court of the United States.

DECEMBER TERM, 1866.

SCHOONER HAMPTON & CARGO
vs.
UNITED STATES. } No. 166.

Appeal from the Supreme Court of the District of Columbia.

The court below has certified the above cause to this court as one involving questions of difficulty and general importance, (rec., p. 19;) but it is thought that the questions presented by the record are of very easy solution.

The vessel was captured January 13, 1863, by the United States Potomac flotilla, while prosecuting a voyage to eastern Virginia, from the port of Baltimore, with a cargo on board, deliverable at some point on the Virginia shore. The schooner was owned by the master, a citizen of the United States, resident in Maryland, and was subject to a mortgage dated December 13, 1862, in favor of Joseph B. Brinkley, of Baltimore, for $823.—(Rec., pp. 16, 17.) The mortgagor was in possession of the vessel, and the only claim interposed was by the mortgagee, who intervened for the protection of his interest in the property.—(Rec., p. 14.) The single question is, whether he is entitled, under the circumstances of the case, and by the law of war and acts of Congress, to receive restitution of the amount of his mortgage out of the proceeds of the sale of the vessel.

1. It is apparent that the more difficult question, whether a neutral or friendly mortgagee of an *enemy's* vessel, *out of possession*, can sustain a claim of property in a court of prize, does not arise in this cause.

The vessel here was not of actual hostile ownership, and her condemnation was not had upon the ground of enemy proprietorship; she was captured and condemned for breach of blockade and for illicit trading with the enemy. It was the conduct of the vessel, not her ownership, which subjected her to capture and condemnation.

2. The question being then as to the effect of breach of blockade or unlawful trading by a vessel subject to mortgage upon the interest of the mortgagee, there can be no doubt that the mortgagee is to be held bound conclusively by the acts of the master and mortgagor in possession of the vessel.

This must be so, if the mortgage creates a mere *lien*, and, *a fortiori*, if it passes the title to the mortgagee; for if the legal title has been transferred, the mortgagee must be subject to all the liabilities of the owner of a vessel under the law of war, and among them the ordinary liability of answering to the belligerent blockading power for the acts of the master. If the law were otherwise—and a mortgagee could claim restitution of his interest in property guilty of breach of blockade—the consequence would inevitably be that the mortgaging of vessels would become a common method of insurance against the perils of blockade running and belligerent capture. The argument upon which Lord Stowell affirmed the liability of the cargo for breach of blockade by the vessel applies with equal cogency to the case of such an

interest as that under consideration.—(The Adonis, 5 Rob., 200; the Exchange, 1 Edwards, 42; James Cook, ibid., 261.)

The mortgagor in possession is *conclusively* the agent of the mortgagee for all purposes of the navigation of the vessel, and cannot be permitted to aver ignorance or innocence in regard to any act of the mortgagor affecting belligerent rights in time of war. If the owner incur a forfeiture of the vessel without the privity of the mortgagee, he has his remedy against the mortgagor.

In the present case the mortgage was created after hostilities were on foot, and both of the parties were residents of Maryland. They were both, therefore, incapable of carrying on commercial intercourse with insurrectionary Virginia, and all property of each engaged in such intercourse was subject to condemnation as prize of war.—(The Rapid, 8 Cranch, 162; the Sally, ibid., 384.) Thus, independently of the blockade, this vessel, and the interest therein, both of the mortgagor and mortgagee, were liable to capture and condemnation.

3. But a mortgagee out of possession stands in no better position as a claimant in a case of maritime capture of an enemy's ship or other property than the holder of a bottomry bond, (The Tobago, 5 Rob., 222;) or of bills of exchange given for repairs, (The Eenrom, 2 Rob., 5;) or a former owner retaining a lien for the payment of the purchase money, (The Marianna, 6 Rob., 25;) or a consignee who has made advances to the shipper of merchandise, (The Frances, 8 Cranch, 419;) and in each of these cases it has been held that the interest described is not sufficient to support a proprietary claim in a prize court.

A mortgagee of a vessel out of possession is not, in the eye of the law, the owner. He is not invested with the rights, or entitled to the benefits, or subject to the liabilities of an owner. He is not answerable for wages of the master, (20 Maine, 213; 8 Serg. & R., 118;) nor liable for repairs and supplies.—(7 Barb., 488; 7 Corven, 697.) But the holder of an unconditional bill of sale, as well as a mortgagee who has taken actual possession, stand on a different footing. There the party is liable for supplies furnished and repairs made upon the ship.—(4 Hill, 177; 15 Mass., 477.) In truth, a mortgagee has nothing but a *lien*, before possession is taken of the vessel, and she is registered in her own name. His title is but collateral security for the debt.—(Howard v. Odell, 1 Allen 87.)

The allowance of such an interest out of prize property is subject to all the objections which have induced the courts in England and America to exclude cases of other liens created by the mere private contract of parties from their consideration.

It is believed that the only case in which a qualified ownership is recognized in prize courts as a foundation for a claim of property is the case of a right or lien, dependent upon, and accompanied by, possession of the property, and imposed by the general law of the mercantile world. Such is the case of *freight* upon enemies' goods seized in the vessel of a friend.—(The Frances, 8 Cranch, 418.) In the case of this interest there can never be any collusion or fraud between the parties.

It is inherent and visible in the substance of the thing itself. The captor has knowledge and notice of it as soon as he discovers the property.—He captures the cargo subject to the charge of the ship-owner in possession of it, who would be totally without remedy for

his freight unless allowed to collect it from the captured cargo. There is no analogy between a lien for freight and the lien of a mortgagee when the mortgagor is in possession of the vessel.

4. The act of March 3, 1863, (12 Stats., 762,) does not apply to the present case, as it relates to confiscations for interterritorial offences, and not to captures at sea of prize of war.—(Opinion of Betts, J., in the Sally Magee.)

This vessel was captured and is confiscable for breach of blockade as well as illicit trading with the enemy; both of which are grounds of condemnation cognizable under the *jus gentium* administered in courts of prize.

Opinion of Nelson, J., in the Nassau Blatchford's prize cases, 665.

The Sally, 8 Cranch, 384. 418

HENRY STANBERY,
Attorney General.

J. HUBLEY ASHTON,
Ass't Attorney General.